

SEDGWICK, DETERT, MORAN & ARNOLD LLP
ROBERT N. BERG Bar No. 099319
One Market Plaza
Steuart Tower, 8th Floor
San Francisco, California 94105
Telephone: (415) 781-7900
Facsimile: (415) 781-2635

Attorneys for Defendant, Counterclaimant and Third-Party Plaintiff
MARTIN FRANCHISES, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ESTATE OF VIOLA B. SPAULDING;
FLORENCE SPAULDING, trustee;
LYNN SPAULDING, doing business as
Spaulding Enterprises; and TINA
SPAULDING WARD, doing business as
Spaulding Enterprises, THE
CONSERVATORSHIP OF EILEEN
SPAULDING.

CASE NO. C 08-00672 CRB

THIRD-PARTY COMPLAINT OF MARTIN FRANCHISES, INC.

Plaintiffs.

V.

YORK CLEANERS, INC., a dissolved California corporation; **ESTATE OF BARNARD LEWIS, DECEASED;** **DAVID VICTOR LEWIS,** an individual; **MARTIN FRANCHISES, INC.,** an Ohio corporation; **SETH R. DOLE,** an individual; and **RUTH DOLE,** an individual; and **DOES 1 through 100.**

Defendants.

MARTIN FRANCHISES, INC., an Ohio corporation.

Third-Party Plaintiff

V.

Cooper Industries, Ltd.,

Third-Party Defendant, a Texas corporation.

1 Pursuant to Fed.R.Civ.P.14, defendant and third-party plaintiff Martin Franchises, Inc.
 2 files the present third-party complaint against third-party defendant Cooper Industries, Ltd. as
 3 follows:

4 **JURISDICTION AND VENUE**

5 1. Jurisdiction of this action is founded upon 82 U.S.C. § 6972(a); 42 U.S.C. §§ 9607
 6 and 9613.

7 2. Venue is proper in the United States District Court, Northern District of California,
 8 because venue is proper in the main action.

9 **PARTIES**

10 3. Martin Franchises, Inc. is an Ohio corporation, and at relevant times herein, was
 11 authorized to do business in this district.

12 4. Third-party defendant Cooper Industries Ltd. is a Texas corporation authorized to
 13 do business and doing business in this district.

14 **FIRST CAUSE OF ACTION**
 15 [Contractual Indemnity]

16 5. Martin incorporates by reference all allegations of paragraphs 1-4, inclusive, of this
 17 third-party complaint as though fully set forth herein.

18 6. On or about 1981, third-party plaintiff Martin and third-party defendant Cooper
 19 entered into a contract.

20 7. A provision in that contract called for Cooper to provide full written indemnity to
 21 Martin for injuries and/or damages arising out of the operations of the dry cleaning franchises in
 22 question herein.

23 8. Martin has tendered the claim of the plaintiffs herein, including, but not limited to,
 24 the Estate of Viola Spaulding, et al., to Cooper.

25 9. To date, Cooper has failed to abide by the contractual provision and has failed to
 26 accept indemnity of Martin.

27 10. As a proximate result of Cooper's breach herein, the third-party plaintiff, Martin,
 28 has incurred and continues to incur damages, including defense fees and costs. Moreover,
 additional damages will ensue if Cooper fails to accept the tender, including potential additional

1 damages in the form of any settlement or judgment.

SECOND CAUSE OF ACTION
[Declaratory Relief]

4 11. Martin incorporates by reference all allegations of paragraphs 1 through 10,
5 inclusive, of this third-party complaint, as though fully set forth herein.

6 12. Due to the contractual provision requiring Cooper to indemnify Martin, and due to
7 Cooper's failure to abide by that contractual provision, a present controversy has arisen between
8 Martin and Cooper.

9 13. A declaratory judgment is necessary and proper at this time for the Court to
10 determine the respective rights and liabilities of the parties regarding any contractual indemnity
11 provision contained in the contract between the parties herein.

14. Martin has no plain, speedy or adequate remedy at law.

PRAYER FOR RELIEF

14 WHEREFORE, defendant, third-party plaintiff Martin prays for judgment as follows:

15 1. For indemnification pertaining to the Spaulding complaint, with Martin being the
16 beneficiary indemnitee, and Cooper being the indemnitor;

17 2. For a declaration that the contractual indemnity provision in the contract between
18 Martin and Cooper applies and that, thus, Cooper is obligated to fully defend and indemnify
19 Martin;

20 || 3. For costs of suit incurred herein;

21 || 4. For attorneys' fees; and

22 | 5. For such other and further relief as this Court may deem just and proper.

Dated: March 03, 2008

SEDGWICK, DETERT, MORAN & ARNOLD LLP

26 By _____ /s/
Robert N. Berg

Attorneys for Defendant, Counterclaimant, and Third-
Party Plaintiff
MARTIN FRANCHISES, INC.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28